Supreme Court, U.S.
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In the
Supreme Court of the United States

ISOLINA PICON, Petitioner,

v.

PETER A. BENSON,
COUNTY OF SAN MATEO,
ROBERT FOUCRAULT, et al.,
Respondents

On Petition For Writ of Certiorari
To The California Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the precedent setting decision reached by the California Court of Appeals in the above-entitled case denying the next of kin the right to possess and control the disposition of the bodies of their deceased relatives triggers a Due Process violation that confers jurisdiction on this Court to review on a writ of certiorari.

Whether the rights of possession and control of one's own body is a property interest protected by the Due Process Clause.

Whether the rights of possession and control of one's own body is a property interest protected by the Due Process Clause that passes to the next of kin at death.

Whether the rights of possession and control of one's own body is a property interest protected by the Due Process Clause that passes to the next of kin for purposes of determination of the disposition of the remains of a deceased person.

Whether the precedent setting Opinion issued by the California Court of Appeals in the above-entitled case holding that two separate California statutes be read in conjunction not consecutively as was written triggers a Due Process Clause violation when the effect of the ruling grants a Peremptory Writ of Mandate extinguishing the rights of the Plaintiff to seek redress for the denial of her right to determine the disposition of the remains of her son at death.

Whether the precedent setting Opinion issued by the California Court of Appeals in the above-entitled case holding that two separate California statutes be read in conjunction not consecutively as was written triggers a Due Process Clause violation when the effect of the ruling grants a Peremptory Writ of Mandate and results in a loss of property in the form of payment of costs to the Defendants.

Whether the precedent setting Opinion issued by the California Court of Appeals in the above-entitled case triggers a Due Process Clause violation when de novo Standard of Review was not applied to the issues raised by two separate pleadings, instead combining the arguments raised by one Defendant Dr. Benson with the Defendants the County of San Mateo and Robert Foucrault without providing the Plaintiff notice or the opportunity to brief the new issues raised that resulted in the granting of a Peremptory Writ of Mandate and results in a loss of property in the form of payment of costs to the Defendants.

Whether the precedent setting Opinion issued by the California Court of Appeals in the above-entitled case triggers a Due Process Clause violation when de novo Standard of Review was not applied, instead combining the arguments raised by one Defendant Dr. Benson in a separate summary judgment pleading with the arguments raised by the Defendants the County of San Mateo and Robert Foucrault without providing the Plaintiff notice or the opportunity to oppose the issues raised, the effect of which is the improper review grants a Peremptory Writ of Mandate

extinguishing the rights of the Plaintiff to seek redress for the denial of her right to determine the disposition of the remains of her son at death.

Whether the precedent setting Opinion issued by the California Court of Appeals in the above-entitled case triggers a Due Process Clause violation when de novo Standard of Review was not applied, instead combining the arguments raised by one Defendant Dr. Benson in a separate summary judgment pleading with the arguments raised by the Defendants the County of San Mateo and Robert Foucrault without providing the Plaintiff notice or the opportunity to oppose the issues raised, the effect of which is the improper review grants a Peremptory Writ of Mandate and results in a loss of property in the form of payment of costs to the Defendants.

Whether the issuance of a Peremptory Writ of Mandate that denies a plaintiff procedural Due Process when de novo review was not followed triggers a constitutional deprivation of Due Process when the result is the loss of property in the form of a judgment against the Plaintiff.

Whether the issuance of a Peremptory Writ of Mandate triggers a constitutional deprivation of Due Process when a statutory interpretation alters the plain meaning of the language of a statute and results in the loss of property in the form of a judgment against the Plaintiff.

Whether the issuance of a Peremptory Writ of Mandate triggers a constitutional deprivation of Due Process when a statutory interpretation combines two statutes in order to reach an

opinion in favor of the Defendants that results in the loss of property in the form of a judgment against the Plaintiff.

Whether the issuance of a Peremptory Writ of Mandate triggers a constitutional deprivation of Due Process when the State acts to deprive the Plaintiff of a post-deprivation hearing on the merits, thereby extinguishing the Plaintiff's right to seek redress.

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JURISDICTIONAL STATEMENT

The Fourteenth Amendment prohibits states from "depriv[ing] any person of life, liberty, or property, without Due Process of law." U.S. Const. amend. XIV, §1. At the threshold, a claim under § 1983 for an unconstitutional deprivation of property must show (1) a deprivation (2) of property (3) under color of state law. *Parratt v. Taylor*, 451 U.S. 527, 536-37, 101 S.Ct. 1908, 68 L. Ed. 2d 420 (1981). When the California Court of Appeals issued a Peremptory Writ of Mandate in the above-entitled case, the effect was a sanctioning by the State of a denial of pre- and post-deprivation process afforded to the Plaintiff by the Constitution. The issuance of the Peremptory Writ extinguishes the constitutional rights of the Plaintiff to a hearing to provide an opportunity to vindicate her claims. *Board of Regents v. Roth*, 408 U.S. 577, 92 S.Ct. 2701, 33 L. Ed. 2d 548 (1972). When the California Court of Appeals issued its opinion May 25, 2010, that on its face does not follow de novo review, employs a method of statutory interpretation that ignores plain language by combining two statutes, and rewrites the law, making California coroners and independent contractors interchangeable, the effect was to remove a procedure -- notice prior to the deprivation and a remedy -- and the opportunity to seek redress for the deprivation in California's courts. By publishing the Opinion on June 22, 2010, the Opinion set precedent in California that conflicts with a recent decision In New York State [*Shipley v. City of New York*] and

allows California coroners/independent contractor doctors the authority to retain body parts after the performance of a lawful autopsy without the notification and consent of the next of kin, which results in the loss of the common law right to control the disposition of the remains at death. In so doing, California has ignored previous relevant decisions by this Court that recognize "the right of every Individual to the possession and control of his own person, free from all restraint or interference of others," *Union Pacific Ry. Co. v. Botsford*, 141 U.S. 250, 251, 11 S.Ct. 1000, 35 L.Ed. 734 (1981). It is "so rooted in the traditions and conscience of our people," *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 78 L.Ed. 674 (1934), overruled in part, *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed. 2d 653 (1964), as to be ranked a fundamental liberty protected by the "substantive" component of the Due Process Clause. *Schmerber v. California*, 384 U.S. 757, 772, 86 S.Ct. 1826, 16 L. Ed. 2d 908 (1966). ("The integrity of an individual's person is a cherished value of our society."); *Rochin*, 342 U.S. at 174, 72 S.Ct. 205 (describing unauthorized physical invasions of the body as "offensive to human dignity"). A liberty, this Court has "strongly suggested," extends to the rights of the individual and next of kin to determine "how to best protect dignity and independence at the end of life." *Washington v. Glucksberg*, 521 U.S. 702, 716, 720, 117 S.Ct. 2258, 138 L. Ed. 2d 772 (1997); *Cruzan v. Missouri Dept of Health*, 497 U.S. 261, 302, 305, 110 S.Ct. 2841, 111 L.Ed. 2d 224 (1990). Therefore, the Due Process Clause of

the Fourteenth Amendment provides this Court jurisdiction to review the decision of the California Court of Appeals to issue a Peremptory Writ of Mandate denying the Plaintiff pre- and post-deprivation process on a Writ of Certiorari.

STATEMENT OF FACTS

On October 25, 2006, Plaintiff's son Nicholas Picon died a sudden death. On October 26, 2006, Dr. Peter A. Benson an independent contractor employed by the County of San Mateo since the 1960's, conducted an autopsy on the remains of Nicholas Picon. At the conclusion of the autopsy which ended on the same date as it began, the body, minus the heart, was released to the funeral home. The Plaintiff was not notified nor asked to grant consent of the heart's removal and retention by Dr. Benson. On October 30, 2006, the Plaintiff had a funeral for her son and she was not aware that his heart was not with the remains that she lay to rest. On November 13, 2006, the Plaintiff learned that her son's heart had been retained and was sent to Stanford University for scientific research. On November 21, 2006, San Mateo Coroner Robert Foucrault returned a human heart to the Plaintiff. *Benson v. Superior Court*, 185 Cal.App. 4th 1179 (2010). See Opinion at pages 2-3; see, generally, Third Amended Complaint hereinafter "TAC."

PROCEDURAL HISTORY

On October 24, 2007, Plaintiff filed a civil suit in San Mateo Superior Court against Coroner Foucrault and the County of San Mateo for 1) Breach of mandatory duty; 2) Breach of the right to control the disposition of the remains of a deceased person; 3) Negligent infliction of emotional distress. On January 28, 2008, Plaintiff filed a first amended complaint adding an additional cause of action alleging that Coroner Foucrault and the County of San Mateo violated the Plaintiff's constitutional rights of Due Process under 42 U.S.C.S. Section 1983. The case was removed to Federal District Court by the Defendants County of San Mateo and Coroner Robert Foucrault. On July 10, 2008, Judge Samuel Conti dismissed with prejudice the Due Process cause of action and remanded the three remaining causes of action. On August 28, 2008, Judge Joseph C. Scott dismissed with prejudice the breach of mandatory duty cause of action. On September 12, 2008, the Plaintiff filed a second amended complaint alleging breach of the right to control the remains of a deceased person and negligent infliction of emotional distress. The second amended complaint named the independent contractor Dr. Peter A. Benson as a Defendant. After motion practice the third amended complaint was filed on January 13, 2009. On October 6, 2009, Defendant Peter A. Benson filed a motion for Summary Judgment. On September 30, 2009, Defendants County of San Mateo and Robert Foucrault filed a motion for

Summary Judgment or Summary Adjudication. On December 21, 2009, Judge John L. Grandsaert denied the Defendants' motions and the case was set for trial on the merits to be heard on January 25, 2010. On January 12, 2010, the independent contractor Dr. Peter A. Benson filed a petition to the California Court of Appeals for a Peremptory Writ of Mandate and requested a stay of the trial. On January 14, 2010, the County of San Mateo and Coroner Robert Foucrault filed a petition to the California Court of Appeals for a Peremptory Writ of Mandate and requested a stay of the trial. On January 15, 2010, the California Court of Appeals stayed the trial and issued a Palma Notice to the Plaintiff. On March 2, 2010, on the Court's own motion, the Court consolidated the two writ petitions. On May 25, 2010, the California Court of Appeals filed the Opinion granting the Peremptory Writ. On June 22, 2010, the California Court of Appeals published the Opinion, which then set precedent throughout the State of California. On July 6, 2010, the Plaintiff timely filed a petition for rehearing with the California Court of Appeals thereby reserving contested facts and issues for review. On July 13, 2010, the petition for re-hearing was denied. On July 29, 2010, the Plaintiff timely filed a petition for review with the Supreme Court of California. On September 22, 2010, the Supreme Court of California denied review. On October 25, 2010, the California Court of Appeals issued a remittitur to the Superior Court of San Mateo County ordering the Superior Court to vacate its orders denying Defendants' motions for summary

judgment. On November 5, 2010, the Superior Court of San Mateo issued an order granting Summary Judgment in favor of the Defendants. On November 22, 2010, the Superior Court of San Mateo entered a judgment against the Plaintiff in favor of the Defendants Robert Foucrault and the County of San Mateo awarding costs and disbursements incurred in defense of the action. On November 23, 2010, the Superior Court of San Mateo entered a judgment against the Plaintiff in favor of the independent contractor Dr. Peter A. Benson awarding costs and disbursements incurred in defense of the action. *See* attached Judgments and Orders.

DUE PROCESS

As noted above, the Plaintiff expressly raised the Due Process issue in the trial court when she filed the first amended complaint adding an additional cause of action alleging that Coroner Foucrault and the County of San Mateo violated the Plaintiff's constitutional rights of Due Process under 42 U.S.C.S. Section 1983. The face of the first amended complaint at page 13, lines 15-16, states, "If this court rejects the allegations presented in the preceding causes of action then it will be rejecting them under color of state law." At page 15, lines 9-12, Plaintiff states:

> ...If the standards set forth in California Government Code §§ 27491.4(a), and 27491.45(b) allow the San Mateo County Coroner to deprive

> the Plaintiff of her property interest in the remains of her deceased child a violation of the Fourteenth Amendment has occurred and the County and the Coroner are liable to the Plaintiff in an action at law suit in equity, or other proceeding for redress under the Constitution of the United States.

In her Reply Brief to the Supreme Court of California at page 3, the Plaintiff stated:

> If the Court of Appeals' decision were to stand it would eliminate any individual right to pre-deprivation Due Process when the coroner/independent con-tractor acts to retain body parts and render moot the procedural safeguards contemplated by the legislatures when drafting the statutory framework authorizing the coroner to conduct autopsies in order to determine the case [sic] of death.

The Supreme Court of California declined to review the issue.

INAPPROPRIATE STANDARD OF REVIEW RESULTING IN THE DENIAL OF DUE PROCESS

In addition to the aforementioned denial of Due Process, the California Court of Appeals denied the Plaintiff the Due Process afforded to her by the

Constitution when the published opinion did not follow de novo review. The opinion, commencing at page 5, states, citations omitted:

> We review summary judgment appeals by applying the same three step analysis applied by the trial court: First, we identify the issues raised by the pleadings. Second, we determine whether the movant established entitlement to summary judgment, that is, whether the movant showed the opponent could not prevail on any theory raised by the pleadings. Third, if the movant has met its burden, we consider whether the opposition raised triable issues of fact.

Paradoxically, the opinion goes on to state at page 9:

> Dr. Benson's arguments overlap to a great degree with Foucrault and the county's arguments, but rather than rely on statutory immunity, he simply argues he had no duty to obtain Picon's consent to retain her son's heart. He asserts any limited quasi-property right Picon might have had in her son's remains cannot be expanded to conflict with statutes (§§ 27491.4 and 27491.45) permitting the coroner to retain organs and tissues collected during an autopsy.

> Finally, Dr. Benson also contends Picon's claims against him are barred by the applicable statute of limitations. Although Foucrault and the county's points are well taken, we believe the most straightforward explanation here is that Picon never established that Defendants owed her a duty to obtain her consent before retaining her son's heart.

Despite the fact that the California Court of Appeals purports to follow de novo review, the opinion on its face states that the arguments raised by one Defendant in a separate summary judgment motion being reviewed by the writ was applied to two other Defendants [County of San Mateo and Robert Foucrault] despite the fact that the arguments were not raised; therefore not opposed by the Plaintiff in either her opposition to the summary judgment/ summary adjudication of issues nor the opposition filed against the writ petitions. Despite the fact that the Plaintiff timely filed a petition for rehearing raising the issue of the denial of notice, the California Court of Appeals denied the petition for rehearing and the California Supreme Court denied the timely filed petition for review. The Plaintiff raised the improper standard of review followed in the petition for rehearing at page 20, which states:

> The application of a new issue not raised by the moving papers denies the Plaintiff a very basic tenet of law, notice. The Plaintiff cannot

> reasonably be expected to oppose an issue that was not raised in the moving papers. To grant a writ reversing the denial of summary judgment of such an important precedent setting case based on an issue not properly before the court or the litigant opposing it is unjust to say the least. The Plaintiff is requesting modification/reversal of the inter-locutory order issued by this Court to the extent the Writ of Mandate was based improperly upon the non-establishment of a duty owed to the Plaintiff by the Defendants/Petitioners Robert Foucrault and San Mateo County where the issue was not put before the trial court nor was the Plaintiff afforded the statutorily prescribed time to oppose.

Despite the fact that the Plaintiff timely raised the issue of improper standard of review, the California Court of Appeals denied rehearing. The effect of this triggered a violation of Plaintiff's constitutionally protected right to Due Process when the writ was issued granting summary judgment/summary adjudication denying the Plaintiff the opportunity to seek redress to vindicate her claims and awarding a monetary judgment in favor of the Defendants.

DENIAL OF RIGHT TO DETERMINE THE DISPOSITION OF REMAINS OF A DECEASED PERSON

The Denial of Right to Determine the Disposition of Remains of a Deceased Person is alleged in the original, first, second and third amended complaints. At page 20, lines 5-8, of the TAC [which was the operative pleading at the time of the issuance of the Peremptory Writ of Mandate] Plaintiff states:

> In sum, Plaintiff alleges that she was denied her legally cognizable right to determine the disposition of the remains of her son to bury him and lay his remains to rest in a manner of her own choosing.

At page 27, lines 16-21, of the TAC, Plaintiff states:

> Plaintiff alleges and her factual allegations demonstrate that if she is unsuccessful in her attempts to prevail in this lawsuit, coroners of this state and beyond would be effectively given the green light to the unauthorized retention of organs and body parts at will without providing notice to the next of kin for any reason whatsoever as determined by the Coroner.

Plaintiff goes on to state at page 27, lines 22-24:

> Plaintiff contends that the argument would be that by simply returning any portion of a corpse, essentially anything the Coroner deems to be "not to be the whole body," he will have acted within the law.

Further at page 28, lines 4-7:

> Plaintiff alleges that as a result of the factual allegations of her case Coroners of this state will continue to abuse discretion conferred to them by statute and do so with added vigor and authority if she is unsuccessful in her attempts to put a halt to the abuses that she alleges to have occurred.

In the timely filed petition for re-hearing at page 28, the Plaintiff argued:

> Lastly, California Gov Code section 27491.4 was amended in 1979 to include an entire provision regarding consent and recognizing the "person who has acquired the right to control the disposition of the remains" (§ 27491.4, subd. (b).). Therefore the legislatures' intent clearly is to recognize a property interest in the disposition of the remains of a deceased person at autopsy.

THE OPINION GRANTS TO THE INDEPENDENT CONTRACTOR THE AUTHORITY WITHOUT LIABILITY TO RETAIN BODY PARTS WHICH DENIES LITIGANTS DUE PROCESS

Dr. Benson is an independent contractor that by statute is not authorized to retain human body parts without the express consent of the next of kin. Despite this fact, the California Court of Appeals in its published opinion has held that the independent contractor doctor has interchangeable authority with the Coroner, an elected sworn peace officer that has a fiduciary duty to the public. The new authority granted by the California Court of Appeals in its published opinion at page 13, rewrote the existing law:

> ...we disagree with Picon that the legislature literally meant only the person occupying the office of corner can make the decision to retain parts of the body removed at autopsy. Instead, we hold a physician employed by the Coroner may make that decision.

The fact that a determination that the independent contractor doctor does not have the same authority as the Coroner was argued by the Plaintiff in her opposition to Writ A127305 commencing at the bottom of page 25:

> If this Court were to give any consideration to the argument that an independent contractor not vested with the authority conferred by

> statute should be allowed to make unilateral decisions regarding the retention of entire organs then this Court would be writing new law and superseding the language and the intent of the legislators when drafting the existing statutes into law.

Again in her opposition to Writ A127305, the Plaintiff at page 26 argues:

> Therefore to argue before this court in an application for writ review that Dr. Benson is somehow authorized by statute to act in regards to a nondelegable duty when making the determination to retain an entire organ is contravene not only to the statutes, his actions are expressly unauthorized by the language of his own contract with the County of San Mateo.

By ignoring both the plain language of the statute and the legislative history in its opinion the California Court of Appeals has denied the Plaintiff procedural and substantive due process of law. The effect of which has denied the Plaintiff her right to vindicate her claims of wrongdoing.

Furthermore, in her opposition to the two separate summary judgment motions at Exhibit 9, page 453, lines 18-24, the Plaintiff stated:

> It was not reasonably necessary for the Coroner in this case to retain the heart separate from the burial of the body. As we have read in the facts above, the body was not buried until October 30, 2006; one day after Dr. Benson was done taking the samples from the heart. Had Dr. Benson bothered to inform the family that the heart would be retained for a little while longer until the samples were obtained, the heart could have been buried with the body and none of these issues would have arisen.

By sanctioning the conduct of the independent contractor Dr. Benson, the Supreme Court of California has rubber-stamped the denial of pre- and post-deprivation Due Process afforded the Plaintiff by the Constitution.

A statutory interpretation by the California Court of Appeals that two separate statutes be read concurrently is a denial of due process when the facts as applied to the statute clearly state that the actions of the Defendants went beyond the authority conferred by the statutes.

The opinion at page 15 states, "We agree with the Defendants that Section 27491.4 must be read in conjunction with Section 27491.45, which specifically provides for retaining parts of the body." Despite the fact that in the timely filed petition for rehearing, the Plaintiff pointed out at pages 24-25, the fact that:

> ...section 27491.45 contains not one but two consent requirements; specifically, California Government Code Section 27491.45(b) was added by amendment in 1973 to the original statute enacted in 1965 and this specific section most recently amended in the year 2000 reads: (b) The coroner may, in his discretion, allow removal of parts of the body by a licensed physician and surgeon or trained transplant technician for transplant, or therapeutic, or scientific purposes pursuant to Chapter 3.5 (commencing with section 7150) of Part 1 Division 7 of the Health and Safety Code, only if the following conditions are met: (1) The provision of the part will not necessarily mutilate the body or interfere with the autopsy. (2) The decedent or other person, as specified in Section 7151 of the Health and Safety Code, has consented...

Despite the fact that the Plaintiff timely pointed out the fact that reading the two separate statutes together to support its opinion expressly contradicts the plain language and legislative history of section 27491.45, the California Court of Appeals denied rehearing and the California Supreme Court denied review thereby rewriting law and denying the Plaintiff Due Process. The effect of which extinguished her constitutionally

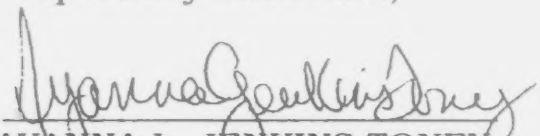
protected right to seek redress in a court of law to vindicate her claims of injury. The denial was exacerbated further by the resulting entry of a monetary judgment against the Plaintiff without Due Process.

ALLOWANCE FOR ISSUANCE OF THE WRIT

The Supreme Court of California has decided that citizens that die under circumstances that warrant an autopsy in California have no right to determine the disposition of their remains at death because the coroner/independent contractor doctor has complete autonomy to retain body parts for scientific research, the determination of the cause of death, or coroner training. Furthermore, the California Supreme Court has upheld a ruling that states that a coroner/ independent contractor doctor has no duty to request consent before retaining body parts. This ruling eradicates the long-standing principle that the next of kin has the control to determine the disposition of the remains at death. This decision decided a common law federal question differently than the Supreme Court of New York State in *Shipley v. New York*, which was filed on September 28, 2010. Furthermore, the issue of the common law right of the next of kin to determine the disposition of the remains at death is an important question of federal law that has not been, but should be, settled by this Court. The decision of the Supreme Court of California to

deny review conflicts with the afore-mentioned relevant decisions of this Court. Furthermore, the precedent setting Opinion in California conflicts with the traditional common law premise that the right of possession and control of one's own body is a sacred right that should be afforded protection when the right is taken from the individual and his/her next of kin without Due Process where existing rules and procedures enacted by the legislature of the state are ignored and/or rewritten by the judiciary.

Respectfully submitted,



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Petitioner ISOLINA PICON

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

PETER A. BENSON, Petitioner, v. Super. THE SUPERIOR COURT OF SAN MATEO COUNTY, Respondent; ISOLINA PICON, Real Party in Interest.	A127285 (San Mateo County Ct. No. CIV 467161)

COUNTY OF SAN MATEO et al., Petitioners, No. v. THE SUPERIOR COURT OF SAN MATEO COUNTY, Respondent; ISOLINA PICON, Real Party in Interest.	A127305 (San Mateo Super. Ct. CIV 467161)

A county coroner, conducting an inquiry into cause of death, has no duty to obtain consent from next of kin before retaining a part of the decedent's body to determine cause of death, or for scientific investigation or coroner training. We therefore grant the petitions for extraordinary relief filed by the defendants in the underlying action and direct the trial court to enter judgment for defendants.

BACKGROUND

Twenty-three-year-old Nicholas Picon died unexpectedly at home. On October 26, 2006, defendant Peter A. Benson, M.D., a forensic pathologist, performed a postmortem exam on behalf of the San Mateo County Coroner's Office. Dr. Benson had performed postmortem exams under contract with the county since 1968.

Dr. Benson found a "structural abnormality" in Nicholas Picon's heart during the course of the postmortem exam. Dr. Benson decided to retain the heart for further examination. He also ordered toxicology tests.

Three days later, Dr. Benson reexamined the heart. He took tissue samples and sent them to an outside laboratory for preparation of biology slides.

By November 9, 2006, Dr. Benson had received the biology slides and the toxicology test results ("negative for drugs and medication"). Dr. Benson concluded the cause of death was "probable

cardiac dysrhythmia due to intramural tunneling of the left anterior descending coronary artery." Dr. Benson, however, intended to send the heart to a heart pathology specialist at Stanford University to confirm his findings.

Meanwhile, the coroner's office had released Nicholas Picon's body, and his mother, plaintiff Isolina Picon (Picon), buried his remains on October 30, 2006. According to Picon, no one from the coroner's office informed her that her son's heart had been retained. When she learned the coroner's office had retained the heart, she asked for its return. The coroner returned the heart on November 20 or 21, 2006.

Picon sued the County of San Mateo, County Coroner Robert Foucrault, and Dr. Benson. She purported to state causes of action for (1) "denial of quasiproperty right to control the remains of a deceased person," and (2) negligence. Picon alleged that Dr. Benson's retention of the heart was "unauthorized." She believed Dr. Benson had retained the heart for his own "self serving interest" and so that it could be released to Stanford University. Her amended complaint states Dr. Benson was "intrigued by the rarity of the heart condition that ultimately led to [her son's] untimely death." Foucrault was to blame for allowing Dr. Benson "unfettered freedom." Thus Foucrault (and presumably the county, too) "became vicariously liable for Dr. Benson's actions."

The defendants moved for summary judgment. Foucrault and the county argued that retention of

the heart was authorized by state law, and that they were also immune from liability for discretionary acts under the applicable provisions of Government Code[1] sections 815 and 820.2. Dr. Benson similarly argued his actions were authorized by state law, and that he had no duty to obtain Picon's consent before retaining her son's heart.

In opposition to defendants' motions, Picon submitted an expert declaration that cast doubt on Dr. Benson's conclusions and his need to retain the heart. Judy Melinek, M.D., a forensic pathologist, believed Nicholas Picon did not die from coronary artery tunneling. In her opinion a viral infection that had spread to his heart had led to his death. Dr. Melinek did not "understand why the entire heart organ was retained in this case." She opined, "There was no clinical diagnostic reason that I could see that would necessitate the retention of Nicholas Picon's entire heart organ."

The trial court denied defendants' motions, finding a disputed issue of fact as to why defendants had retained the heart. The trial court concluded: A reasonable trier of fact, based upon the conclusions of Dr. Melinek, could infer that Dr. Benson did not need the entire heart organ to ascertain cause of death, and thus that there were other reasons why the heart was retained.

DISCUSSION

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[1] All code section references are to the Government Code unless otherwise noted.

Standard of Review

An order denying a motion for summary judgment may be reviewed by a petition for peremptory writ. (Code Civ. Proc., § 437c, subd. (m)(1).) The standard of review is the same regardless of whether the trial court grants or denies a summary judgment motion. "Rulings on such motions are examined de novo." (*Buss v. Superior Court* (1997) 16 Cal.4th 35, 60.)

> We review summary judgment appeals by applying the same three-step analysis applied by the trial court: First, we identify the issues raised by the pleadings. Second, we determine whether the movant established entitlement to summary judgment, that is, whether the movant showed the opponent could not prevail on any theory raised by the pleadings. Third, if the movant has met its burden, we consider whether the opposition raised triable issues of fact.

(*Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 939-940, italics omitted; see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Ca1.4th 826, 849-855.)

The Coroner's Duties

The coroner's many duties are enumerated at section 27460 et seq. One of the coroner's principal duties is of course to inquire into and determine the cause of death in appropriate

cases. (See § 27491.) There is no dispute here that the death of Nicholas Picon warranted an inquiry.

To perform this inquiry, the coroner may order a postmortem examination or autopsy. (§ 27491.4, subd. (a).)[2] The coroner may "make or cause to be made an analysis of the stomach, stomach contents, blood, organs, fluids, or tissues of the body." (*Ibid.*) The coroner is statutorily authorized to retain tissues as necessary or advisable to the inquiry. (*Ibid.*; see also Health & Saf. Code, § 7102 [coroner entitled to custody of remains of person whose death is subject of investigation until conclusion of autopsy or

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[2] Section 27491.4, subdivision (a) provides: "For purposes of inquiry the coroner shall, within 24 hours or as soon as feasible thereafter, where the suspected cause of death is sudden infant death syndrome and, in all other cases, the coroner may, in his or her discretion, take possession of the body, which shall include the authority to exhume the body, order it removed to a convenient place, and make or cause to be made a postmortem examination or autopsy thereon, and make or cause to be made an analysis of the stomach, stomach contents, blood, organs, fluids, or tissues of the body. The detailed medical findings resulting from an inspection of the body or autopsy by an examining physician shall be either reduced to writing or permanently preserved on recording discs or other similar recording media, shall include all positive and negative findings pertinent to establishing the cause of death in accordance with medicolegal practice and this, along with the written opinions and conclusions of the examining physician, shall be included in the coroner's record of the death. The coroner shall have the right to retain only those tissues of the body removed at the time of the autopsy as may, in his or her opinion, be necessary or advisable to the inquiry into the case, or for the verification of his or her findings. No person may be present during the performance of a coroner's autopsy without the express consent of the coroner."

medical investigation].)[3] In addition, the coroner may retain parts of the body that, in the opinion of the coroner, may be necessary or advisable for scientific investigation and training. (§ 27491.45, subd. (a)(1).)[4] The coroner may employ outside laboratories, hospitals, or research institutions to conduct the coroner's scientific investigation or training. (*Ibid.*) The coroner may release parts of the body to third parties for noncoroner training, educational, and research purposes, but in that case the coroner must obtain consent under the methods described in the Uniform Anatomical Gift Act. (Health & Saf. Code, § 7150 et seq.)

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[3] There are specific statutory provisions regarding the removal of the pituitary glands (§ 27491.46) and corneal eye tissue (§ 27491.47). They are not at issue here.

[4] Section 27491.45, subdivision (a)(1) provides: "The coroner shall have the right to retain parts of the body, as defined in subdivision (g) of Section 7150.1 of the Health and Safety Code, removed at the time of autopsy or acquired during a coroner's investigation as may, in the opinion of the coroner, be necessary or advisable for scientific investigation and training. The coroner may employ or use outside laboratories, hospitals, or research institutions in the conduct of the coroner's scientific investigation or training."

Note section 27491.45 does not reflect the Legislature's repeal of Health and Safety Code section 7150.1 when it revised the Uniform Anatomical Gift Act in 2007. (See Stats. 2007, ch. 629, § 1.) The Act's definition of parts of the body now appears in Health and Safety Code section 7150.10, subdivision (a)(18), and includes organs.

To fulfill his or her duties, the coroner may:

> ...summon a surgeon or physician to inspect the body or hold a post mortem examination or a chemist to make an analysis of the stomach or the tissues of the deceased and give a professional opinion as to the cause of the death.

(§ 27499). When there is a question as to the cause of death, the coroner acts "within his authority in ordering an inquest held, and in authorizing his autopsy surgeon to proceed in the usual manner." (*Huntly v. Zurich General A. & L. Ins. Co.* (1929) 100 Cal.App. 201, 214.)

Defendants' Contentions

Foucrault and the county point out that the Government Code grants substantial discretion to the coroner in performing the duties of his office, including discretion to retain tissues and parts of the body. They therefore rely on section 820.2, which provides a public employee is not liable for injuries resulting from an exercise of discretion. Alternatively, Foucrault and the county argue that neither Dr. Melinek's declaration nor any of Picon's other factual assertions created a triable issue of fact. In their opinion, there was no evidence to support an inference that Dr. Benson retained the heart for some improper reason.

Dr. Benson's arguments overlap to a great degree with Foucrault and the county's arguments, but rather than rely on statutory

immunity, he simply argues he had no duty to obtain Picon's consent to retain her son's heart. He asserts any limited quasi-property right Picon might have had in her son's remains cannot be expanded to conflict with statutes (§§ 27491.4 & 27491.45) permitting the coroner to retain organs and tissues collected during an autopsy. Finally, Dr. Benson also contends Picon's claims against him are barred by the applicable statute of limitations.

Although Foucrault and the county's points are well taken, we believe the most straightforward explanation here is that Picon never established that defendants owed her a duty to obtain her consent before retaining her son's heart.

Duty of Care

> Whether a defendant owes a duty of care is a question of law. A defendant may be liable in tort for negligently inflicting emotional distress on persons to whom the defendant owes a duty of care. That duty can have three alternative origins: (1) a duty imposed on the defendant by law, (2) a duty assumed by the defendant, or (3) a duty arising out of a preexisting relationship between plaintiff and defendant.

(*Aguirre-Alvarez v. Regents of University of California* (1998) 67 Cal.App.4th 1058, 1063; see also § 815, subd. (a) [public entity not liable for

injury except as otherwise provided by statute].)

Picon appears to rely on a duty imposed by law. Paradoxically, however, she relies on the very law --sections 27491.4 and 27491.45 -- that allows defendants to retain tissues and parts of the body. Those sections do not require consent from next of kin to do so. Consent is required only when the coroner releases parts of the body to third persons for noncoroner purposes. (§ 27491.45, subd. (a)(2).)

In light of the specific statutory authorization to retain parts of the body removed at an autopsy, it is difficult to discern any duty defendants owed to Picon before making the decision to retain her son's heart in this case. Picon cites little in the way of legal authority or facts to persuade us otherwise. She does attempt to parse the language of sections 27491.4 and 27491.45 to support her case. We will discuss her arguments point by point.

Dr. Benson's Status as an Independent Contractor

Picon attaches great significance to the fact Dr. Benson is an independent contractor. According to Picon,

> Petitioner's [sic] are not immune from liability based on the fact that Dr. Benson is an independent contractor and his actions were not authorized by California Government Code section 27491.4 or 27491.45(a)(1) & (2).

She points out those sections grant only the "coroner" the discretion to retain tissues or parts of the body; thus, Dr. Benson did not have the authority to make the decision to retain her son's heart.

Picon appears to be suggesting a government officer cannot act through, or delegate authority to, an expert. Outside of sections 27491.4 and 27491.45 themselves, she cites no authority for this surprising proposition.

The law does not presume the coroner will personally conduct postmortem examinations. The coroner, in his or her discretion, may make or "cause to be made" a postmortem examination. (§ 27491.4, subd. (a).) The coroner may summon physicians to conduct postmortem exams (§ 27499), and may employ outside laboratories, hospitals, or research institutions to conduct the coroner's scientific investigation (§ 27491.45, subd. (a)(1)).

In this case, Foucrault, who was elected to the position of coroner, is not a medical doctor. (Compare § 24010 [providing for office of medical examiner in lieu of office of coroner].) He must therefore employ physicians such as Dr. Benson to conduct postmortem exams. The record shows Foucrault granted Dr. Benson the authority to use his professional medical judgment to conduct such exams, including the authority to retain organs for purposes of investigation into cause of death. According to Dr. Benson, he has had that authority through "three coroners, three chief deputy coroners, over a period of 47 years."

Foucrault delegated the direct supervision of Dr. Benson to his chief deputy. Foucrault's chief deputy at that time was also not a doctor, having joined the coroner's office after working in law enforcement. The chief deputy approved (albeit after the fact) Dr. Benson's decision to retain Nicholas Picon's heart.

Given the coroner's duties and the realities involved in performing those duties, we disagree with Picon that the Legislature literally meant only the person occupying the office of coroner can make the decision to retain parts of the body removed at an autopsy. Instead we hold a physician employed by the coroner may make that decision.[5]

Tissues of the Body

Although not set forth in a separate argument in her briefs, Picon alludes to the language in section 27491.4, subdivision (a), that allows the

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[5] Although Picon attaches much significance to Dr. Benson's employment status, she never discusses the legal basis for the county's liability for Dr. Benson's acts. (See § 815.4 [public entity liable for injury proximately caused by tortious act or omission of independent contractor to same extent public entity would be subject to liability if it were a private person].) As a general rule, an employer of an independent contractor is not liable for physical harm caused to another by the contractor. (*McCarty v. Department of Transportation* (2008) 164 Cal.App.4th 955, 970.) Although there are many exceptions to the general rule (see Haning et al., Cal. Practice Guide: Personal Injury (The Rutter Group 2009) ¶ 2:327 et seq., p. 2-95 et seq.), we are left to guess what exception might apply here.

coroner to retain "only those tissues of the body" necessary for the coroner's inquiry. Picon apparently believes the reference to tissues precludes retention of an entire organ.

Section 27491.4 does distinguish between tissues of the body and organs in another part of subdivision (a) (make an "analysis of the stomach, stomach contents, blood, organs, fluids, or tissues of the body"). Further, relevant dictionary definitions of the word "tissue" do not inexorably lead to a conclusion the word includes organs of the body.[6]

The problem for Picon, of course, is that while section 27491.4 might not expressly provide for retention of organs, section 27491.45 does. That section specifically permits the retention of parts of the body removed at the time of an autopsy to study them. Picon alleges Dr. Benson retained her son's heart because he was intrigued by the rarity of the heart condition he had discovered. In other words, he wanted to study it. There is no hint or suggestion that Dr. Benson retained the heart for

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[6] Stedman's Medical Dictionary (27th ed. 2000) page 1838, provides the following definition of tissue: "A collection of similar cells and the intercellular substances surrounding them." According to that dictionary, there are four basic tissues in the body, including muscle tissue. (*Ibid.*) "[C]ardiac muscle" is listed under the definition. (*Ibid.*) The Attorneys' Dictionary of Medicine, however, in defining "tissue," states, "An organ also has a special function, and it may be composed of one kind of tissue, but usually it is composed of several kinds of tissue, and in this respect it differs from a tissue." (6 Schmidt, Attorneys' Dict. of Medicine, p. T-144 (rev. 12/2009).)

some depraved or repugnant purpose. Instead he allegedly sought to satisfy his or a colleague's scientific curiosity regarding the heart condition. Only if that scientific curiosity had led to the release of the heart to a third party for noncoroner research purposes would consent from next of kin have been required. (*Id.*, subd. (a)(1).) Notwithstanding much insinuation by Picon of a conspiracy to funnel body parts to Stanford University for research, she produced no evidence to rebut defendants' showing that Nicholas Picon's heart did not leave the coroner's office. (See *Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1250-1253 [evidence of general pattern of misconduct not sufficient to support claim that defendant mishandled plaintiff's decedent's body].)[7]

Ironically, the only reason the distinction between tissues and organs is relevant here is because defendants insist the sole reason they retained Nicholas Picon's heart was to investigate cause of death. Thus it is defendants themselves who invoke section 27491.4 as authority for the discretion to retain an organ to determine cause of death.

We agree with defendants that section 27491.4 must be read in conjunction with section 27491.45, which specifically provides for retaining

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[7] We hasten to add that although there was evidence the coroner's office utilized the services of Stanford University to determine cause of death, Picon produced no evidence of a conspiracy to funnel body parts to Stanford University for research.

parts of the body. "Under [section] 27491.4 et seq., the coroner is authorized to remove, and either retain or release to specified entities, body tissues and parts." (4 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Introduction to Criminal Procedure, § 43, p. 65.) The scientific study permitted by section 27491.45 must include a study to determine cause of death. Otherwise, the coroner could retain an organ for scientific study or training, but not for determining cause of death, one of the coroner's primary missions. We can think of no reason the Legislature would intend such a result, and Picon suggests none.[8] (See *Pacific Southwest. Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 169 [code sections in pari materia must be harmonized with each other to extent possible].)

Quasi Property Right and the Palmquist Case

As Picon contends, she had a temporary, *quasi-property* right in the body of her deceased son for purposes of burial. (See *Spates v. Dameron Hospital Assn.* (2003) 114 Cal.App.4th 208, 221-222; see also Health & Saf. Code, § 7100; 5

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[8] At a time when the law did not expressly provide for the retention of tissues or organs, the Attorney General nevertheless opined: "We therefore conclude that no legal liability attaches to the coroner or autopsy surgeon who, in order to discover the cause of death—a duty imposed upon him by law—removes tissue and organs and, when reasonably necessary to complete his diagnosis, retains them after the burial of the body." (27 Ops.Cal.Atty.Gen. 46, 49 (1956).)

Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 460, pp. 681-684.) The right is typically invoked in actions involving malfeasance by funeral homes. (See, e.g., *Sinai Temple v. Kaplan* (1976) 54 Cal.App.3d 1103, 1110-1112; *Cohen v. Groman Mortuary, Inc.* (1964) 231 Cal.App.2d 1, 4-5, disapproved on other grounds in *Christensen v. Superior Court* (1991) 54 Ca1.3d 868, 889.) Next of kin, however, have also asserted the right against the coroner. (See, e.g., *Davila v. County of Los Angeles* (1996) 50 Cal.App.4th 137, 140 [failure to make reasonable efforts to locate next of kin]; *Gray v. Southern Pacific Co.* (1937) 21 Cal.App.2d 240, 242 [wrongful performance of autopsy].) There is no interference with that right, however, when the coroner performs a lawful autopsy. (*Gray v. Southern Pacific Co., supra,* at p. 246.)

The summary judgment record shows defendants performed a lawful autopsy. Picon nevertheless refers this court to *Palmquist v. Standard Acc. Ins. Co.* (S.D.Cal. 1933) 3 F.Supp. 358 (*Palmquist*), as support for her contention that defendants' retention of her son's heart interfered with her quasi-property right. She believes the facts of her case "mirror almost identically the facts in *Palmquist*."

Palmquist is a federal district court ruling on a motion for judgment notwithstanding the verdict. (*Palmquist*, supra, 3 F.Supp. at p. 359.) The case did involve the retention of organs following an autopsy. There the similarities between *Palmquist* and the instant case end. First and foremost, *Palmquist* did not involve the acts of a coroner.

The autopsy in *Palmquist* was performed by physicians representing an insurance company. They were hired to determine whether the decedent's death was accidental for insurance purposes. (*Ibid.*) Those physicians retained the decedent's heart, brain, and one kidney after the autopsy for further pathological examination. Some months later, the decedent's spouse asked that the organs be returned. Her request was refused. A jury returned a verdict in favor of the spouse for her emotional distress. The district court denied the defendants' motion for entry of judgment notwithstanding the verdict. (*Palmquist*, supra, 3 F.Supp. at p. 360.)

The federal court's decision in *Palmquist* says nothing regarding the duties of a coroner, and liability in *Palmquist* appears to have been found based not on the initial retention of the organs, but on the refusal to return them. *Palmquist* has no application here.

Unsupported Factual Claims

We believe we have sorted out and discussed Picon's best legal arguments, but Picon has also made several allegations of serious misconduct against the defendants, including claims that they may have altered the autopsy report and that the heart returned to her may not have been her son's heart. Many of those claims are not supported by a citation to the record; in fact Picon did not cite to the record in her statements of fact to this court. And in those instances where she has cited to the record, the referenced material does not

Defendants are entitled to recover their costs for this proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(A).)

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Reardon, J.

We concur:

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Ruvolo, P.J.

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Sepulveda, J.

judgment was bereft of citations to the record. Her failure to cite to the record was not for lack of providing materials in opposition to the motions. Picon submitted hundreds of pages of deposition transcripts, numerous declarations, and several documentary exhibits in opposing the motions.

In any event, the summary judgment record contains nothing to rebut defendants' showing that Nicholas Picon's heart was removed and retained to determine cause of death. Not even Dr. Melinek's declaration, the one piece of evidence the trial court identified as contradicting that showing, created a material, triable issue of fact. That Dr. Melinek did not understand why Dr. Benson retained the entire heart, or that she did not believe there was any reason to retain the heart, was irrelevant to the question of whether the defendants acted within the discretion provided by sections 27491.4 and 27491.45. That she disagreed with Dr. Benson's decisions, actions, or conclusions does not mean defendants violated a duty to Picon. In fact, as defendants and amici curiae (the National Association of Medical Examiners and the California Society of Pathologists) point out, if anything Dr. Melinek's declaration actually underscores Dr. Benson's opinion that a specialist should confirm the cause of death. As things stand, we have two forensic pathologists reaching different conclusions on cause of death, so exactly why Nicholas Picon's heart failed remains unresolved.

provide an evidentiary basis for her claims. For example, in support of her allegation that Stanford University kept organs sent by the coroner for "scientific future research," she cites only to a long soliloquy by her attorney at Dr. Benson's deposition.

This failure to cite to evidence in the record repeats a pattern that began in the trial court. With the exception of a few references to the autopsy report, Picon's opposition to the motions for summary

Ultimately, the disagreement over whether Dr. Benson should have retained the heart (or how much of it he should have retained), and whether he reached the right conclusion on cause of death is irrelevant. Even if we credit Picon's more plausible factual allegations—that Dr. Benson retained the heart to study it and that he intended to send it to Stanford University for research—defendants would still be entitled to judgment in their favor. The law did not impose a duty on defendants to obtain Picon's consent unless and until they acted to send the heart to Stanford University for noncoroner purposes.[9]

Finally, if defendants are to blame for anything here, it is poor communication with the Picon family. To that end we note the record shows the coroner's office has now adopted a formal policy with respect to notifying family members of the retention of organs.

DISPOSITION

Let a peremptory writ of mandate issue directing the trial court to vacate its orders denying defendants' motions for summary judgment. Instead the court shall issue new orders granting those motions.

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[9] As we conclude defendants did not owe a duty to Picon, it is unnecessary for us to discuss Dr. Benson's statute of limitations argument.

Court of Appeal, First Appellate District,
Division Four - Nos. A127285/A127305

S184910

IN THE SUPREME COURT OF CALIFORNIA

En Banc

PETER A. BENSON, Petitioner,

v.

SUPERIOR COURT OF SAN MATEO COUNTY,
Respondent;
ISOLINA PICON, Real Party in Interest,
AND CONSOLIDATED CASE.

The petition for review is denied.

/s/ GEORGE
Chief Justice

Court of Appeal, First Appellate District,
Division Four - Nos. A127285/A127305

S184910

IN THE SUPREME COURT OF CALIFORNIA

PETER A. BENSON, Petitioner,

v.

SUPERIOR COURT OF SAN MATEO COUNTY,
Respondent;
ISOLINA PICON, Real Party in Interest,

And consolidated case

On application of real party in interest and good cause appearing, it is ordered that the time to serve and file the reply to answer to petition for review is extended to and including September 13, 2010.

/s/ GEORGE
Chief Justice

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

ISOLINA PICON,

Plaintiff,

vs.

COUNTY OF SAN MATEO, et al.,

Defendant

Case No. CIV 46761

ORDER AFTER REMITTITUR

Dr. Peter Benson's Motion for Summary Judgment, heard on December 21, 2009, is GRANTED. Judgment will be entered in favor of Dr. Peter Benson and against Isolina Picon.

San Mateo County's Motion for Summary Judgment, heard on December 21, 2009, is GRANTED. Judgment will be entered in favor of San Mateo County and against Isolina Picon.

The Court's Orders of January 5, 2010, filed on January 6, 2010, denying the Summary Judgment Motions of Dr. Peter Benson and San Mateo County, are VACATED.

Dated: NOV 05, 2010 /s/ John L. Grandsaert
Honorable John L. Grandsaert

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

ISOLINA PICON,	No. CIV 467161
Plaintiff,	~~[PROPOSED]~~
vs.	JUDGMENT IN FAVOR OF
PETER A. BENSON, M.D., COUNTY OF SAN MATEO, et al.,	DEFENDANT PETER A. BENSON, M.D.
Defendants.	

This Court, having on November 5, 2010, granted defendant Peter A. Benson, M.D.'s Motion for Summary Judgment, and having ordered entry of judgment as requested in said motion,

IT IS SO ORDERED, ADJUDGED AND DECREED that defendant Peter A. Benson, M.D. is granted Judgment in his favor against plaintiff Isolina Picon, and that defendant Peter A. Benson, MD. have and recover from plaintiff Isolina Picon costs and disbursements incurred in the defense of this action pursuant to Code of Civil Procedure §§1032 and 1033.5.

Dated: NOV 23, 2010

/s/ JOHN L GRANDSAERT
JUDGE OF THE
SUPERIOR COURT

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Attorneys for Defendants
COUNTY OF SAN MATEO and
ROBERT FOUCRAULT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

ISOLINA PICON Plaintiff, vs. COUNTY OF SAN MATEO; ROBERT FOUCRAULT, individual and as Coroner, PETER A. BENSON, M.D., individual and as Examiner; and DOES 1 TO 100,	Case No. C1V 467161 [PROPOSED] JUDGMENT IN FAVOR OF DEFENDANTS COUNTY OF SAN MATEO AND ROBERT FOUCRAULT

Defendants.

This Court, having on November 5, 2010, granted the Motion of Defendants County Of San Mateo and Robert Foucrault for Summary Judgment, and having ordered entry of judgment as requested in said motion, hereby orders as follows:

IT IS SO ORDERED, ADJUDGED AND DECREED that Defendants County of San Mateo and Robert Foucrault are granted Judgment in their favor against Plaintiff Isolina Picon, and that Defendants County of San Mateo and Robert Foucrault have and recover from Plaintiff Isolina Picon costs and disbursements incurred in the defense of this action pursuant to Sections 1032 and 1033.5 of the Code of Civil Procedure.

Dated: 11/22, 2010 /s/ John L. Grandsaert

HON. JOHN L.
GRANDSAERT
JUDGE OF THE
SUPERIOR COURT

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

PETER A. BENSON, Petitioner, v. THE SUPERIOR COURT OF SAN MATEO COUNTY, Respondent; ISOLINA PICON, Real Party in Interest.	A127285 (San Mateo County Super. Ct. No. CIV 467161)
COUNTY OF SAN MATEO, et al. Petitioners, v. THE SUPERIOR COURT OF SAN MATEO COUNTY, Respondent; ISOLINA PICON, Real Party in Interest	A127305 (San Mateo County Super. Ct. No. CIV 467161) ORDER GRANTING PUBLICATION

THE COURT:

The requests for publication of this court's May 25, 2010 opinion are granted and it is hereby ordered that said opinion by published in the Official Reports.

Dated: _____

Ruvolo, P.J.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

PETER A. BENSON
v.
THE SUPERIOR COURT OF
SAN MATEO COUNTY
ISOLINA PICON
A127285

COUNTY OF SAN MATEO et al.
v.
THE SUPERIOR COURT OF
SAN MATEO COUNTY
ISOLINA PICON
A127305

San Mateo County
Sup. Ct. No. CIV 467161

PEREMPTORY WRIT OF MANDATE

FROM THE PEOPLE OF THE STATE OF CALIFORNIA TO THE SUPERIOR COURT OF SAN MATEO COUNTY, GREETINGS:

Good cause appearing for the issuance of this peremptory writ of mandate,

WE DO COMMAND YOU, the Superior Court, to vacate your orders denying defendants' motions for summary judgment. Instead you shall issue new orders granting those motions.

Witness the Honorable Ignazio J. Ruvolo, Presiding Justice of the Court of Appeal of the State of California, First Appellate District, Division Four.

Attest my hand and the Seal of this Court on this 25th day of October, 2010.

Diana Herbert,
Clerk/Administrator
By: /s/ C. Hoo
Deputy Clerk